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2001-014-625

General Services Administration
FAR Secretariat (MVP)
1800 F Street, NW, Room 4035
Washington, DC 20405

Attention: Laurie Duarte

Subject: FAR Case 2001-014@gsa.gov

Ladies and Gentlemen:

I am an environmental scientist from Atlanta, Georgia and I work for an environmental engineering firm that has performed successfully under federal contracts for over 15 years. I, along with my peers, am proud of my company's proven record of outstanding support of the government in its mission and want to see that record continue. However, I am concerned that the government has proposed a rule that presumes that many of its contractors are repeated violators of various federal and state laws and, as a consequence, should be precluded from competing for federal contracts. Compounding this issue is that the decision whether a company is qualified to compete for government contracts will be based on the judgment of a single person with limited information and facts at hand who will be under pressure to make a decision within strict time limits. If that decision is one that precludes a company from a selected competition, the consequences of the decision could have a very significant impact on a company's ability to remain in business.

The proposed FAR rule has been selected as the government's solution to what some seem to think is a pervasive problem: i.e., that most businesses do not act ethically and are not conducting their business dealings in a fair and ethical manner and therefore should not be permitted to compete for federal contracts. This presumption goes further because it also assumes that the current laws and statutes do not provide appropriate disincentives or punishments to force businesses to act properly and conduct business in an upstanding and law abiding manner. These are very serious assumptions upon which such a rule is justified. If this is such a pervasive problem, why are measures in the current laws and statutes not deterring contractors from becoming repeated offenders? If contractors are racking up records of repeated offenses, why aren't these records available for the contracting officer (CO) to evaluate during the "contractor responsibility determination" of a procurement?

While I believe tax paying citizens would like to see all businesses acting in an ethical manner, the issue is: (1) whether it is appropriate for a CO acting alone for a

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a determination at the stage where this rule proposes it be made (in the middle of a single procurement and prior to actual selection of the contractor for award); and (3) whether it is fair to preclude a potential contractor in the middle of a procurement but not inform the contractor until after the fact that it was eliminated from the competition.

I recognize that the CO must notify his legal counsel when any decision to preclude a contractor is made; however, the CO is not compelled to consult with anyone prior to making such a weighty decision, a decision that might significantly impact that company's ability to remain in business or make a profit (the motive for competing).

Because this process is so patently unfair, outside parties with grudges or hidden agendas could easily manipulate procurements to eliminate or narrow competition unfairly. What has heretofore been considered a fair and openly competitive process would become a process open to manipulation and absent due process for the party harmed by the action. Notification to an agency legal counsel of action a CO plans to take is not consultation; it remains a unilateral decision based on limited factual information. Potentially harmful information provided by third parties anxious to narrow the field of competition and the denial of the targeted contractor's right to defend its actions or provide mitigating information or facts would significantly influence the CO's decision.

My interest in this new rule comes from my desire to see my company remain in business and be successful in competitions with other businesses. My company's long established record of integrity and business ethics has been proven repeatedly by the fact that we continue to be considered a responsible contractor and continue to win awards from the same federal agencies again and again. It would be extremely difficult for a government agency to be unaware of the way that a company operates and does business if it works with that same company over many years on many contracts. In my judgment, this proposed rule is unnecessary and places yet another burden on contractors to prepare a defense in anticipation of possible allegations of wrongdoing. The presumption is that the normal way of doing business is to act unethically and violate laws. This atmosphere of suspicion and distrust benefits no one.

Sincerely,

Michael Profit

Michael Profit
Principal Scientist
CDM Federal Programs Corporation